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PATENTS  
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BOARD OF PATENT APPEALS AND INTERFERENCES*Patricia Lee*  
#16 Appeal  
Brief  
+ fee  
6-12-03

In re Application of:

Thomas J. Reddin, et al.

Serial No. 09/296,120

Filed: April 21, 1999

For: METHODS AND SYSTEMS FOR  
OCCASION BASED LIFESTYLE  
MARKETING

Group Art Unit: 3622

Examiner: Janvier, J.

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GROUP 3600

## APPLICANT'S APPEAL BRIEF

Mail Stop Appeal Brief - Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attn: Board of Patent Appeals &amp; Interferences

Dear Sirs:

Pursuant to 37 C.F.R. §1.192 and MPEP §1206, the Applicant submits this Appeal Brief, in triplicate, to the Board of Patent Appeals and Interferences. This brief is in response to the Final Rejection mailed on February 25, 2003. A Notice of Appeal was filed on March 31, 2003. The Appeal Brief fee of \$320.00 pursuant to 37 C.F.R. §1.17(c) is submitted herewith.

## I. REAL PARTY IN INTEREST

This application is assigned to The Coca-Cola Company. An assignment from the individual inventors to The Coca-Cola Company was recorded with the Patent Office at Reel 010077, Frame 0653 on July 6, 1999.

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## II. RELATED APPEALS AND INTERFERENCES

The Applicant is not aware of any related appeals or interferences.

## III. STATUS OF CLAIMS

All pending claims, Claims 1-57 and 59-66, stand rejected. The claims are attached hereto in Appendix A. All claims are appealed herein.

## IV. STATUS OF AMENDMENTS

No amendments were filed after the final rejection of February 25, 2003.

## V. SUMMARY OF THE INVENTION

The present invention is directed towards marketing methods that are not dependant upon the price of the product. *See* page 16, lines 24-31. Specifically, the present invention concerns methods for promoting the selection of an **item** 10 by a predetermined type of **consumer**. Page 10, line 13 - page 11, line 18. The methods may include the steps of determining one or more representative **activities** of the **consumer** (page 11, lines 20-35), determining one or more representative **uses** of the **item** by the **consumer** during the representative **activities** (page 12, lines 13-31), and creating **demand** for the **item** by the **consumer** based upon the representative **uses** of the **item** by the **consumer** during the **activities** (page 15, line 21 - page 16, line 16). *See* Fig. 1.

For example, as shown in Fig. 7, the **item** may be a beverage and the predetermined type of **consumer** may be a "home category manager". Page 11, line 3-18. The representative **activity** of the **consumer** may be dinner and the representative **use** of the **item** by the **consumer** during the **activity** may be as a "meal enhancer". The step of creating **demand** by that **consumer** based upon the **use** during the **activity** includes the selection of brands, packaging, merchandising, and messaging as shown in Fig. 7. In other words, the **demand** is created by selecting the

appropriate brands (Cola Brand A), the appropriate packaging (2 liter bottles), the appropriate merchandising (Cola Brand A bundled with frozen foods), and the appropriate messaging (“Complete Your Dinner With Real Refreshment” or “Cola Brand A and Lasagna”) such that the connection is made between the **item** and the **use** of that **item** by the particular type of **consumer** during the representative **activity** such that the **item** and the **activity** drive the sale of the **item** instead of merely the price of the **item**. See Fig. 8 (“I need Cola Brand A to complete my meal”).

Similar methods involve promoting the selection of an item in a predetermined purchase environment by a predetermined type of consumer. As is shown in, for example, Fig. 9, the steps may include determining representative activities of a predetermined type of consumer (for example, shopping); determining representative uses for an item during that activity (a beverage as refreshment or a tide-me-over); determining the manner in which the consumer selects the item in the shopping environment (a stock up shopping trip); and creating a demand for the item by the consumer in the environment based upon the manner in which the consumer selects the item based upon the uses of the item by the consumer during the activity (the selection of brand, packaging, merchandising, and messaging). For example, the messaging may be “Enjoy A Cold Cola Brand A While You Shop.”

Other methods and systems claimed herein include similar occasion based marketing techniques with the addition of determining the number of items sold at in a first period and the number of items sold in a second period so as to determine the effectiveness of the techniques. See page 4, line 21 - page 5, line 6. Still further systems concern the use of a marketing database with the information generated herein. Page 28, lines 24 - page 29, line 17. The present invention thus provides methods and systems for comprehensive occasion-based marketing as opposed to traditional price-based methods.

## **VI. ISSUES**

1. Whether Claims 44 and 45 are unpatentable under 35 U.S.C. §112, second paragraph, as being indefinite?
2. Whether Claims 1-57 and 59-66 are unpatentable under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,649,114 to Deaton, et al.?

## **VII. GROUPING OF CLAIMS**

For the purposes of this Appeal, the Applicant is asserting the separate patentability of the following groups of claims with respect to the anticipation rejection:

Group I: Claims 1-4, 12, 13, 16-19, 44-45, and 53.

Group II: Claims 5-8 and 47-52.

Group III: Claims 9-11.

Group IV: Claims 14-15.

Group V: Claims 20-23.

Group VI: Claims 24-28.

Group VII: Claims 29-35.

Group VIII: Claims 36-43 and 46.

Group IX: Claims 54-57.

Group X: Claims 59-66.

## **VIII. ARGUMENT**

### **Prosecution History**

This present application originally was filed with 66 claims, with Claims 1, 46, 53, 54, 58, 59, and 66 being independent claims. Independent Claim 1 read as follows:

1. A method for promoting the selection of an item by a predetermined type of consumer, said method comprising the steps of:
  - determining one or more representative activities of said predetermined type of consumer;
  - determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities; and
  - creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities.

The Examiner rejected all claims in an Office Action dated November 6, 2001.

Claims 44, 45, and 58 were rejected under 35 U.S.C. §101; Claims 44 and 45 were rejected under 35 U.S.C. §112; and Claims 1-66 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,649,114 to Deaton, et al.

Deaton largely describes a check verification system. The system, however, also provides for target marketing of customers based upon their shopping history. Deaton thus describes the use of point-of-sale coupons and other incentives provided to the customer. *See* Col. 7, lines 31-50. For example, Figs. 15A and B illustrate an infrequent customer program while Figs. 17A & B illustrate a point-of-sale coupon and direct mail coupon system. The coupons are either given at checkout or through the mail. Figs. 18A, B and C show the use of scan product data. If the system determines that the customer is a frequent shopper but does not purchase coffee, the data may determine that a coffee coupon would be suitable. Col. 68, lines 44-48 and line 64 - col. 69, line 2 (“[t]he present invention differs from the systems disclosed in the above-identified patents because, among other things, the present system generates coupons based upon the lack of a purchase of a particular item by comparing against stored history for unique customer IDs, rather than because of the purchase of the item.”) On other items, the system considers the shopper’s history in determining when to issue a coupon. Col. 100, lines 47-63.

The Examiner stated that the step of determining one or more representative activities reads on Deaton's use of customer purchase history data. Likewise, the step of determining one or more representative uses of the item by the customer during one or more representative activities also reads on the use of customer purchase history. Finally, the step of creating demand reads on tracking the products purchased by the consumer.

With respect to Claims 44 and 45 under 35 U.S.C. §112, Claim 44 recites "a computer-readable medium having computer-executable instructions for performing the steps recited in Claim 1" while Claim 45 concerns the steps recited in Claim 39. The Examiner stated that these claims must be independent claims.

In a response mailed on December 11, 2001, the Applicant canceled Claim 58 and traversed the remaining rejections. With respect to the rejection under 35 U.S.C. §112, the Applicant pointed out that numerous claims in the form used herein have been allowed and that claims directed to computer executable instructions stored on a computer-readable media are considered to define patentable subject matter. With respect to the rejection under 35 U.S.C. §102(b) to Deaton, et al., the Applicant asserted that the Examiner strained the ordinary definition of the term "representative activities," *i.e.*, "the when" of the invention. As opposed to the shopping data analyzed in Deaton, the activities claimed herein and defined in the specification are those activities of a given consumer during a particular day. In this context, Deaton provides no disclosure relevant to the representative activities, the representative uses, or creating demand depending upon the activities and uses. For example, Deaton in no way describes using anything while shopping or any other activity.

In an Office Action mailed on April 2, 2002, the Examiner withdrew the rejection under 35 U.S.C. §101; maintained the rejection under 35 U.S.C. §112; and maintained the rejection

under 35 U.S.C. §102. The rejection was made final. The Examiner then repeated the first Office Action in full.

The Applicant responded to the Final Office Action in a response mailed on June 3, 2002. The Applicant again stressed that there is no mention in Deaton of determining the uses of any type of product by the consumer during one or more representative activities as is specifically claims herein. Deaton does not promote using anything during, for example, during shopping. In an Advisory Action mailed on June 14, 2002, the Examiner stated that the response raised new arguments. The Applicant thus filed a Request for Continued Examination on July 2, 2002.

In an Office Action mailed on September 20, 2002 the Examiner maintained the §112 and the §102 rejections. The Examiner stated that he did not find persuasive the Applicant's argument that the disclosure of "purchasing data" does not read on the "representative activity of the predetermined type of the consumer" limitation, *i.e.*, the fact that "data" is not a "use". The Examiner stated that purchasing data are inherently associated with products or services brought for immediate or subsequent consumption. With respect to the argument that Deaton does not disclose the use of an item during one or more representative activities, the Examiner stated that such limitations are inherently supported in the art or implicitly disclosed in the reference. The Examiner then repeated the first Office Action in full.

In a response mailed on December 9, 2002, the Applicant argued that the inherency argument is flawed in that the fact that a certain result or characteristic may occur is insufficient to maintain a rejection. The Applicant thus stressed that Deaton cannot establish (1) determining one or more representative activities of a consumer; (2) determining one or more representative uses of an item by the consumer during the representative activities; and (3) creating demand for the item by

the consumer based upon the uses of the item during the representative activities. These limitation simply are not “necessarily present” in Deaton.

In an Office Action mailed on February 22, 2003, the Examiner maintained the section §112 and §102 arguments. With respect to the §112 argument, the Examiner stated that he does not comment on issued patents. The Examiner then repeated the first Office Action in full.

This appeal followed

**Issue I:** Whether Claims 44 and 45 are unpatentable under 35 U.S.C. §112, second paragraph, as being indefinite?

Pursuant to 37 C.F.R. §1.192(c)(8)(ii), the argument shall specify the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 44 recites “a computer-readable medium having computer-executable instructions for performing the steps recited in claim 1” while Claim 45 concerns the steps recited in Claim 39. The Applicant asserts that the claims are sufficiently definite in that the subject matter is simply what the claim states, a computer-readable medium with the steps recited in Claims 1 and 39. MPEP §2173.05(f) states that a rejection under 34 U.S.C. §112 is *not* proper for a claim that makes reference to a preceding claim so as to define a limitation. For example, “the product produced by the method of claim 1” is specifically cited as an acceptable format. If a product is acceptable, so too is a computer program. In this context, the claims are clearly patentable.

Further, the PTO has allowed perhaps hundreds of dependant claims in exactly this format. See for example, U.S. Patent No. 6,545,691 (Claim 9); U.S. Patent No. 6,449,734 (Claims 17 and 18); U.S. Patent No. 6,401,120 (Claims 14, 31, and 46); U.S. Patent No. 6,393,395 (Claims 21 and 25); U.S. Patent No. 6,360,331 (Claims 12, 19, 24, and 32); U.S. Patent No. 6,359,572



(Claim 10); U.S. Patent No. 6,353,447 (Claims 16); U.S. Patent No. 6,345,386 (Claim 34); U.S. Patent No. 6,317,748 (Claim 13); U.S. Patent No. 6,308,274 (Claims 11, 13, 24, and 43); and U.S. Patent No. 6,298,321 (Claims 13, 25, 28, and 30). The Applicant will be happy to provide the Board with as many additional examples as the Board desires. The Applicant therefore respectfully submits that the claims are definite and patentable.

**Issue II:** Whether Claims 1-57 and 59-66 are unpatentable under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,649,114 to Deaton, et al.?

37 C.F.R. §1.192(c)(8)(iii) states that the arguments shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. §102, including any specific limitations in the rejected claims that are not described in the prior art relied upon in the rejection.

**GROUP I: CLAIMS 1-4, 12, 13, 16-19, 44-45, AND 53**

As described above, Claim 1 states as follows:

1. A method for promoting the selection of an item by a predetermined type of consumer, said method comprising the steps of:
  - determining one or more representative activities of said predetermined type of consumer;
  - determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities; and
  - creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities.

The Applicant respectfully submits that Deaton does not show *any* of the limitations of the claim. Specifically, Deaton does not show the limitations of determining the representative activities of a predetermined type of consumer, the representative uses of an item by the consumer during the activities, or the step of creating demand for the item by the consumer based upon the uses of the item by the consumer during the activities.

### REPRESENTATIVE ACTIVITIES

The representative activities of the predetermined type of consumer are determined in the context of typical day-to-day activities. For example, the specification describes numerous examples of such activities in the context of a beverage for specific types of consumers: “Quick Meal Solutions” (Fig. 7); “Shop Refreshed” (Fig. 9); “Social Events” (Fig. 10); “Drive Refreshed” (Fig. 11); “Snack Time” (Fig. 12); and “Internet Usage” (Fig. 13). Deaton, however, is completely silent on any type of activities of any type of consumer, other than (perhaps) shopping. Rather, Deaton simply discloses tracking a consumer’s shopping history. *See Abstract*. The Applicant submits that determining what a consumer *buys* is not the same as determining what a consumer *does* on a day-to-day basis. This limitation thus is missing from the reference.

### REPRESENTATIVE USES

The representative uses of an item by a consumer during an activity also are determined in the context of the typical uses of the item. For example, the uses of a beverage disclosed herein include: “Treat-Refreshment/Tide-Me-Over” (Fig. 9); “Socializers/Relaxers/Meal Enhancer” (Fig. 10); “Refreshment/Tide-Me-Over/Energizer” (Fig. 12); and “Refreshments/Energizer/Rejuvenation/Meal Enhancer” (Fig. 13). Deaton, however, is completely silent on how a consumer uses any particular item. Further, there is certainly no disclosure of how a consumer uses an item *during* one or more representative activities. Rather, Deaton only discloses tracking a consumer’s shopping history. Again, what a consumer *buys* does not disclose what the consumer *does* with the item. Even more so, what a consumer buys does not disclose what the consumer *does* with the item *during* a particular activity. This limitation thus is missing from the reference.

### CREATING DEMAND

The demand for the item by the consumer is created in the context of the determined uses of the item by the consumer during the determined activities. Specifically, demand may be created in the context of a beverage by the selection of brands, packaging, merchandizing, and messaging. For example, if the activity is “in transit” and the use is “Refreshment/ Tide Me Over”, then the brand may be “Cola Brand A”, the packaging may be “Single Serving Packaging”, the merchandising may be “Gas Island Vending”, and the messaging may be “Drive Refreshed With Cola Brand A” (Fig. 11). Deaton, however, is silent on creating demand for an item by the consumer based upon the uses of the item *during* one or more activities. Rather, Deaton merely provides coupons or other incentives based upon a consumer’s shopping history. Deaton thus totally lacks a disclosure of creating demand in the context of the uses of the item during the representative activities. This limitation thus is missing from the reference.

In summary, Deaton simply does not disclose the occasion based marketing methods claims and described herein. Deaton is completely silent on determining the uses of an item *during* representative activities of a consumer. As such, Deaton also is silent on creating demand in the context of the representative activities and the representative uses.

### INHERENCY

The Applicant respectfully submits that neither the Examiner nor the Board can assert that Deaton discloses the three elements claimed in Claim 1. Rather, this rejection appears to be more of an inherency argument. The crux of the Examiner’s argument seems to be that by tracking the consumer’s shopping history data, the nature of the use of the items purchased and the nature of the activities during which the items are used is somehow inherent. The Applicant respectfully submits that this conclusion is wrong as a matter of law and, further, still does not anticipate the

limitation of creating demand for an item based upon how a consumer uses an item during a particular activity.

An inherency rejection is difficult to maintain. MPEP §2112 states as follows:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art)

...

“In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teaching of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

(Emphasis in the original).

In order to be valid anticipation reference, therefore, the Examiner must show how the limitations of the claim are “necessarily” present in Deaton. At the very least, there can be no debate that there is no “necessary” disclosure in Deaton as to creating demand for an item based upon the uses of the item *during* any type of representative activities. In other word, there is nothing inherent in Deaton as to creating demand by connecting a beverage and driving or a beverage and after school time. The Applicant respectfully submits that the fact a consumer purchases an item proves nothing, inherently or otherwise, as to the uses of that product or the activities of the consumer while using the product or the item. The Applicant therefore asserts that Claim 1 and the Group I claims are patentable.

## **GROUP II: CLAIMS 5-8 AND 47-52**

The Group II claims concern further limitations as to the predetermined type of consumer. In this case, the consumer is a home category manager. Deaton is completely silent on

the characteristics of a home category manager. The Applicant therefore asserts that the Group II claims are patentable.

**GROUP III: CLAIMS 9-11**

The Group III claims concern further limitations as to the predetermined type of consumer. In this case, the consumers are blue-collar adults and teens. Deaton is completely silent on the characteristics of blue-collar adults and teens. The Applicant therefore asserts that the Group III claims are patentable.

**GROUP IV: CLAIMS 14 & 15**

The Group IV claims concern creating demand by messaging that promotes the item as addressing a need associated with one or more uses or associates the item with one or more activities. Deaton is completely silent on such messaging limitations. The Applicant therefore asserts that the Group IV claims are patentable.

**GROUP V: CLAIMS 20-23**

The Group V claims concern creating demand in the context of packaging. Deaton is silent on creating or selecting packaging. The Applicant therefore asserts that the Group V claims are patentable.

**GROUP VI: CLAIMS 24-28**

The Group VI claims concern creating demand by the selection of merchandising, including bundling the item with a different item. Deaton is silent on such limitations. The Applicant therefore asserts that the Group VI claims are patentable.

**GROUP VII: CLAIMS 29-35**

The Group VII claims concern creating demand by the selection of messaging. Deaton is silent on such limitations. The Applicant therefore asserts that the Group VII claims are patentable.

**GROUP VIII: CLAIMS 36-43 AND 46**

The Group VIII claims concern determining the environment in which an item is offered, including a virtual environment and the nature of specific shopping trips. Deaton is silent on such limitations. The Applicant therefore asserts that the Group VIII claims are patentable.

**GROUP IX: CLAIMS 54-57**

Claim 54 is somewhat similar to Claim 1, with the addition of determining the number of items selected in a first predetermined interval and a second predetermined interval so as to determine the effectiveness of the solutions used to create demand. Deaton, however, is only concerned with tracking consumer purchase data and not with tracking overall sales during a first period and a second period in the context of any particular demand solution. The Applicant therefore asserts that the Group IX claims are patentable.

**GROUP X: CLAIMS 59-66**

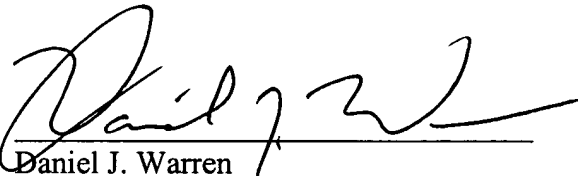
The Group X claims concern receiving and storing the data with respect to the representative activities and the representative uses of an item and then determining a relationship between the activities and the uses by the consumer, particularly in terms of a conversion rate and a profit margin. Again, Deaton only tracks consumer sales history data. Deaton is not interested in any type of relationship between the activities of a consumer and how a consumer uses an item during that activity. The Applicant therefore asserts that the Group X claims are patentable.

**IX. CONCLUSION**

The Applicant respectfully requests that the Board overturn the rejections of the claims. The Applicant respectfully submits that the claims are not anticipated by the disclosure of Deaton, inherently or otherwise.

Any questions may be directed to the undersigned at 404.853.8028.

Respectfully submitted this 29th day of May, 2003

  
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## **APPENDIX A – CLAIMS ON APPEAL**

1. A method for promoting the selection of an item by a predetermined type of consumer, said method comprising the steps of:

determining one or more representative activities of said predetermined type of consumer;

determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities; and

creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities.

2. The method of promoting the selection of an item of claim 1, wherein said step of determining one or more representative activities of said predetermined type of consumer comprises analysis of said one or more representative activities within a predetermined length of time.

3. The method of promoting the selection of an item of claim 1, wherein said step of determining one or more representative activities of said predetermined type of consumer comprises gathering consumer lifestyle information.

4. The method of promoting the selection of an item of claim 3, wherein said step of determining one or more representative activities of said predetermined type of consumer comprises analysis of said consumer lifestyle information.

5. The method of promoting the selection of an item of claim 1, wherein said predetermined type of consumer comprises a home category manager and wherein said one or more representative activities is an event selected from the group consisting of wake up, breakfast, in transit to work, in transit to school, morning break, lunch, afternoon break, after school snack, after school sports, after work workout, dinner, social events, evening snack, and shopping.



6. The method of promoting the selection of an item of claim 5, wherein said item comprises a beverage and wherein said one or more representative uses is a need selected from the group consisting of refreshment, lift, meal enhancer, socializer, re-hydration, relaxer, treat, and a tide-me-over.

7. The method of promoting the selection of an item of claim 6, wherein said step of creating demand for said item comprises messaging directed to said home category manager suggesting use of said beverage as said meal enhancer with said dinner.

8. The method of promoting the selection of an item of claim 6, wherein said step of creating demand for said item comprises messaging directed to said home category manager suggesting use of said beverage as said refreshment during said shopping.

9. The method of promoting the selection of an item of claim 1, wherein said predetermined type of consumer comprises blue-collar adults and teens and wherein said one or more representative activities is an event selected from the group consisting of after school, afternoon, and after work.

10. The method of promoting the selection of an item of claim 9, wherein said item comprises a beverage and wherein said one or more representative uses is a need selected from the group consisting of refreshment, energy, and a tide-me-over.

11. The method of promoting the selection of an item of claim 10, wherein said step of creating demand for said item comprises messaging directed to said blue-collar adults and teens suggesting use of said beverage as said energizer during said afternoon.

12. The method of promoting the selection of an item of claim 1, wherein said step of determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities comprises gathering of consumer purchase information.

13. The method of promoting the selection of an item of claim 12, wherein said step of determining one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities comprises analysis of said consumer purchase information.

14. The method of promoting the selection of an item of consumer of claim 1, wherein said step of creating demand comprises messaging promoting said item as addressing a need associated with said one or more representative uses.

15. The method of promoting the selection of an item of consumer of claim 1, wherein said step of creating demand comprises messaging associating said item with said one or more representative activities.

16. The method of promoting the selection of an item of claim 1, wherein said step of creating demand for said item comprises selection of one or more brands of said item.

17. The method of promoting the selection of an item of claim 16, wherein said one or more brands comprise predetermined beverage brands.

18. The method of promoting the selection of an item of claim 16, wherein said one or more brands of said item is a liquid selected from the group consisting of coffee; tea; water; fruit, vegetable and juice concentrates; fruit, vegetable and juice beverages; isotonic beverages; non-isotonic beverages; milk and milk byproducts; carbonated soft drinks; and soft drink concentrate.

19. The method of promoting the selection of an item of claim 16, wherein said step of selecting one or more brands comprises selection of one or more food and beverage brands.

20. The method of promoting the selection of an item of claim 1, wherein said step of creating demand for said item comprises selection of packaging.

21. The method of promoting the selection of an item of claim 20, wherein said step of selecting packaging comprises selection of a predetermined package.

22. The method of promoting the selection of an item of claim 20, wherein said packaging comprises immediate consumption packaging.

23. The method of promoting the selection of an item of claim 20, wherein said packaging comprises future consumption packaging.

24. The method of promoting the selection of an item of claim 1, wherein said step of creating demand for said item comprises selection of merchandising.

25. The method of promoting the selection of an item of claim 24, wherein said merchandising comprises bundling the location of said item with a different item.

26. The method of promoting the selection of an item of claim 25, further comprising messaging promoting said bundling of said item with said different item.

27. The method of promoting the selection of an item of claim 24, wherein said merchandising comprises bundling the offering of said item with a different item.

28. The method of promoting the selection of an item of claim 27, further comprising messaging promoting said bundling of said item with said different item.

29. The method of promoting the selection of an item of claim 1, wherein said step of creating demand for said item comprises selection of messaging.

30. The method of promoting the selection of an item of claim 29, wherein said messaging comprises media advertising.

31. The method of promoting the selection of an item of claim 30, wherein said messaging is advertising selected from the group consisting of print; radio, television, satellite and cable broadcasting; Internet, e-mail, and computer transmissions; telecommunications; event-based marketing; and direct mail.

32. The method of promoting the selection of an item of claim 29, wherein said messaging comprises in-store displays.

33. The method of promoting the selection of an item of claim 29, wherein said messaging comprises out-doors displays.

34. The method of promoting the selection of an item of claim 29, wherein said messaging comprises the name of said item and said one or more representative uses.

35. The method of promoting the selection of an item of claims 29, wherein said messaging comprises the name of said item and said one or more representative activities.

36. The method of promoting the selection of an item of claim 1, further comprising the step of determining an environment in which said item is offered.

37. The method of promoting the selection of an item of claim 36, wherein said environment comprises a retail environment.

38. The method of promoting the selection of an item of claim 36, wherein said environment comprises a virtual environment.

39. The method of promoting the selection of an item of claim 36, further comprising the step of determining the manner in which said predetermined type of consumer selects said item in said environment.

40. The method of promoting the selection of an item of claim 39, wherein said step of determining the manner in which said predetermined type of consumer selects said item in said environment comprises consumer intercept surveys.

41. The method of promoting the selection of an item of claim 39, wherein said step of determining the manner in which said predetermined type of consumer selects said item in said environment comprises analysis of transactional data.

42. The method of promoting the selection of an item of claim 39, wherein said manner in which said predetermined type of consumer selects said item comprises a purchasing trip selected from the group consisting of quick mission trips, quick meal solution trips, and stock-up trips.

43. The method of promoting the selection of an item of claim 39, wherein said step of creating demand for said item comprises displays located at a location distant from said environment.

44. A computer-readable medium having computer-executable instructions for performing the steps recited in claim 1.

45. A computer-readable medium having computer-executable instructions for performing the steps recited in claim 39.

46. A method for promoting the selection of an item in a predetermined purchase environment by a predetermined type of consumer, said method comprising the steps of:

- determining representative activities of said predetermined type of consumer;
- determining representative uses for said item by said predetermined type of consumer during said representative activities;
- determining the manner in which said predetermined type of consumer selects said item in said predetermined shopping environment; and
- creating demand for said item by said predetermined type of consumer in said predetermined purchase environment based upon said manner in which said predetermined type of consumer selects said item and upon one or more of said uses of said item by said predetermined type of consumer during one or more of said activities.

47. The method of promoting the selection of an item of claim 46, wherein said predetermined type of consumer comprises a home category manager and wherein said representative activities is an event selected from the group consisting of wake up, breakfast, in transit to work, in transit to school, morning break, lunch, afternoon break, after school snack, after school sports, after work workout, dinner, social events, evening snack, and shopping.

48. The method of promoting the selection of an item of claim 47, wherein said item comprises a beverage and wherein said representative use is a need selected from the group consisting of refreshment, lift, meal enhancer, socializer, re-hydration, relaxer, treat, and a tide-me-over.

49. The method of promoting the selection of an item of claim 48, wherein the manner in which said predetermined type of consumer selects said item comprises a shopping trip selected from the group consisting of quick mission trips and quick meal solution trips.

50. The method of promoting the selection of an item of claim 48, wherein the manner in which said predetermined type of consumer selects said item comprises a stock-up shopping trip.

51. The method of promoting the selection of an item of claim 49, wherein said step of creating demand for said item comprises messaging directed to said home category manager during said quick meal solution trip suggesting use of said beverage as said meal enhancer with said dinner.

52. The method of promoting the selection of an item of claim 50, wherein said step of creating demand for said item comprises messaging directed to said home category manager suggesting use of said beverage as said refreshment during said stock-up shopping trip.

53. A method for promoting the selection of a beverage by a consumer, comprising the steps of:

determining the daily activities of said consumer;

determining the needs of said consumer for said beverage during said daily activities;

and

marketing said beverage in association with said needs of said consumer for said beverage during said daily activities.

54. A method for determining the effectiveness of an occasioned-based marketing campaign for the selection of an item within a purchasing environment, comprising the steps of:

determining the number of said items selected within said purchasing environment during a first predetermined interval;

determining one or more types of shoppers for said item in said purchasing environment;

determining representative activities of said one or more types of shoppers;

determining representative uses for said item during said representative activities of said one or more types of shoppers;

deploying solutions within said purchasing environment to create demand for said item by said one or more types of shoppers based upon one or more of said representative uses of said item during one or more of said representative activities;

determining the number of said items selected within said purchasing environment during a second predetermined interval, said second predetermined interval occurring after said deploying step; and

determining the difference between the number of said items purchased during said first predetermined interval and said second predetermined interval.

55. The method for determining the effectiveness of an occasioned-based marketing campaign of claim 54, further comprising the step of determining the average transaction amount for said item.

56. The method for determining the effectiveness of an occasioned-based marketing campaign of claim 55, further comprising the step of determining the average gross profit margin for said item.

57. The method for determining the effectiveness of an occasioned-based marketing campaign of claim 56, further comprising the step of determining the amount of money received based upon said difference between the number of said items purchased during said first predetermined interval and said second predetermined interval, the average transaction amount for said item, and the average gross profit margin for said item.

59. A method for promoting the use of an item by a predetermined type of consumer, said method comprising the steps of:

receiving data corresponding to representative activities of said predetermined type of consumer;

storing said data corresponding to said representative activities of said predetermined type of consumer in a marketing database;

receiving data corresponding to representative uses of said item by said predetermined type of consumer;

storing said data corresponding to said representative uses of said item by said predetermined type of consumer in said marketing database;



determining a relationship between said data corresponding to said representative activities of said predetermined type of consumer and said data corresponding to said representative uses of said item by said predetermined type of consumer; and  
storing said relationship in said marketing database.

60. The method for promoting the use of an item of claim 59, further comprising the step of creating messaging associating said item with said relationship.

61. The method for promoting the use of an item of claim 60, further comprising the step of storing said messaging in said marketing database.

62. The method for promoting the use of an item of claim 61, further comprising the steps of receiving data corresponding to the conversion rate of said predetermined types of consumers in response to said messaging associating said item with said relationship and storing said data corresponding to said conversion rate of said predetermined types of consumers in said marketing database.

63. The method for promoting the use of an item of claim 62, further comprising the steps of receiving data corresponding to the average transaction amount for said item and storing said data corresponding to said transaction amount in said marketing database.

64. The method for promoting the use of an item of claim 63, further comprising the steps of receiving data corresponding to the average gross profit margin for said item and storing said data corresponding to said average gross profit for said item in said database.

65. The method for promoting the use of an item of claim 64, further comprising the step of determining the value of said messaging based upon said conversion rate, said average transaction amount for said item, and said average gross profit margin for said item.

66. A system for facilitating the use of an item by a predetermined type of consumer comprising:

a storage device; and

a processor connected to said storage device,

said storage device storing a program for controlling the processor;

said storage device storing data representing one or more activities of said predetermined type of consumer;

said storage device storing data representing one or more needs of said predetermined type of consumer for said item;

said storage device storing data representing one or more marketing solutions promoting the use of said item by said predetermined type of consumer; and

said processor operative with said program to receive a request for said one or more marketing solutions based upon said one or more activities or said one or more needs of said predetermined type of consumer and to provide said one or more marketing solutions.

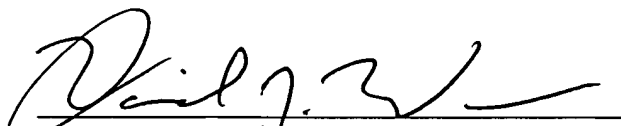


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Daniel J. Warren

Documents attached:

1. Appellant's Appeal Brief + Appendix A – 26 pgs.
2. Check in the amount of \$320.00
3. Return Receipt Post Card

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